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**Notice of Allowability**

Application No.

09/808,737

Examiner

Daniel I. Robinson

Applicant(s)

IMMERZ, MARTIN3

Art Unit

3742

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to amendment filed 11-19-2004.
2. ☒ The allowed claim(s) is/are 12-20.
3. ☒ The drawings filed on 15 March 2001 are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☒ All    b) ☐ Some\*    c) ☐ None    of the:
    1. ☒ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
- \* Certified copies not received: \_\_\_\_\_.
5. ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
  - (a) ☐ The translation of the foreign language provisional application has been received.
6. ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application. **THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

7. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
8. ☐ CORRECTED DRAWINGS must be submitted.
  - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
    - 1) ☐ hereto or 2) ☐ to Paper No. \_\_\_\_\_.
  - (b) ☐ including changes required by the proposed drawing correction filed \_\_\_\_\_, which has been approved by the Examiner.
  - (c) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No. \_\_\_\_\_.

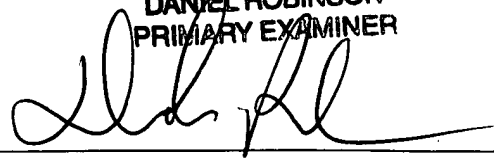
Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet.

9. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |  |   |
|--|---|
| 1 <input type="checkbox"/> Notice of References Cited (PTO-892)  | 2 <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)          |
| 3 <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                    | 4 <input type="checkbox"/> Interview Summary (PTO-413), Paper No. _____             |
| 5 <input type="checkbox"/> Information Disclosure Statements (PTO-1449), Paper No. _____               | 6 <input checked="" type="checkbox"/> Examiner's Amendment/Comment                  |
| 7 <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit of Biological Material | 8 <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
|  | 9 <input type="checkbox"/> Other  |

DANIEL ROBINSON  
PRIMARY EXAMINER



### EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Don Bulson on 10-31-2003.

The application has been amended as follows:

Claims 1-11 have been cancelled.

In the abstract

line 1 delete "The invention relates to"

line 1 delete "a method" and insert therein ---A system---

In the title delete "Method and system" and insert therein --- System---

Claims 12-20 are allowed.

The following is an examiner's statement of reasons for allowance:

The prior art of record neither teaches or suggests a system for applying and element to a living body comprising a, device for physically altering a part of the living body to prepare and/or produce a connection as claimed, and whereby a position detection device is used to detect the position, three

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dimensionally, of both the

physically altering device and the living body via a plurality of markers applied to the altering device. The prior art does not show a system as claimed

for altering a living body to produce a connection including a three dimensional tracking system.

Hunter shows a system much like the claimed invention but shows a connection/alteration to a

marker rather than a living body. Neither Tremaglio or Geiger show some the features of the

claimed invention. Geiger is not classified or crossed into any class relevant to claim 12. Geiger

discloses an apparatus and method for automatically positioning a biopsy needle the imaging

modality used is a two dimensional x-ray whereas claim 12 explicitly recites a three dimensional

tracking system to track in 3D the position of a device to alter the living body. Geiger does show

markers but two dimensional markers are not useful with three dimensional tracking systems.

Geiger also teaches away from tree dimensional tracking since they are costly and one of the

objects of Geiger is to eliminate the need for a radiologist. Geiger shows two dimensional

tracking with an x-ray imaging device to position a needle that does not make a connection to a

living body or physically alter a living body so as to make a connection between an element and

a living body. Tremaglio is not classified in class 600 although claim 12 is cross classified into

class 606.

Tremaglio discloses an apparatus and method for guiding a needle which does not use three

dimensional markers, has no three dimensional tracking does not alter a living body and does not

produce a connection between an element and a living body. Tremaglio is a stereotaxic device

used to direct the tip of a probe to a desired location and either introduce a substance to a body or

make a measurement.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel I. Robinson whose telephone number is 703 306-9043. The examiner can normally be reached on M-F 5:30am-2:30pm.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

dlr

DANIEL ROBINSON  
PRIMARY EXAMINER  
